

## THE BASICS OF CHILD SUPPORT FOR INCARCERATED PARENTS

*This pamphlet provides a quick reference for general information and answers to commonly asked questions on child support and the court process.*

*This pamphlet is not a substitute for legal advice in your case.*

*Protect your rights. Always get legal advice so you understand your rights, responsibilities, and any legal documents.*

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### Do I still have to pay my child support order when I am incarcerated?

Yes. Until the court changes your order, you continue to owe the monthly child support plus 10 percent interest on any past-due support until the court changes the order. To ask the court to change the child support amount, you must file a request for a court hearing.

NOTE: The court does not have the power to change your child support until you file your court papers requesting a change. When the court hears your case, the earliest date that a change your support order can become effective is the date you filed the papers.

### Where do I get the forms to request a hearing to change my child support court order?

Court forms are available at every court clerk's office in California. If you want forms to be mailed to you, always include a self-addressed stamped envelope when you write to the court clerk. Child support forms are also available at the Office of the Family Law Facilitator. You can get information about the Family Law Facilitator in your county at [www.courtinfo.ca.gov/selfhelp/lowcost/flf.htm](http://www.courtinfo.ca.gov/selfhelp/lowcost/flf.htm).

You can also obtain court forms by printing them from the California Courts Web site: [www.courtinfo.ca.gov/forms/](http://www.courtinfo.ca.gov/forms/). **Many of the forms on this website are fillable online.**

### Are there free resources to prepare a child support calculation?

**Yes. The California Department of Child Support Services has a child support calculator on the internet:** [www.childsup.ca.gov/Resources/CalculateChildSupport](http://www.childsup.ca.gov/Resources/CalculateChildSupport)

### Does the California Department of Child Support Services have any other free online resources?

**Yes. They publish a handbook that is available at [www.childsup.ca.gov/Portals/0/resources/docs/pu\\_b160\\_english.pdf](http://www.childsup.ca.gov/Portals/0/resources/docs/pu_b160_english.pdf). It is available in both English**

**and Spanish. It provides information on paternity, paying child support and resolving problems with your child support case.**

### Is there a filing fee to request a hearing on child support?

It depends. There is no filing fee if child support is the only issue and the local child support agency is providing services in your case. If there are issues in addition to child support, such as custody or visitation, fees may be charged. If you receive public assistance, have no or low income or are not sure if the local child support agency is providing services in your case, you can ask the court to waive any court filing or copy fees by completing a Request to Waive Court Fees (form FW-001).

### How can I get a copy of a past court order or other court papers filed in my case?

You must contact the court clerk in the courthouse where your case is filed to get copies of orders or court papers in your file.

Provide your name, the other party's name, the type of case, the case number (if available), and the approximate date of the court order or document requested. There is a photocopy charge unless you have no or low income or receive public assistance. To have this charge waived, you can ask the court clerk for a fee waiver application form, Request to Waive Court Fees (form FW-001).

### Which forms do I need to file to change my child support order?

There are many different forms that you may use. Here are the typical forms you will need to fill out for each child support order you want to change:

**A. Notice of Motion** (form FL-301)

**B. Application for Order and Supporting Declaration** (form FL-310). Explain all the reasons why you are asking to change the court order. (For example, state when you became unemployed, why you are no longer

employed, why you cannot pay the court-ordered support, why you cannot attend the court hearing, and what change you are asking the court to make in the current order).

**C. Financial Statement (Simplified)** (form FL-155)

**D. Request to Waive Court Fees** (form FW-001)

Complete and sign (in black or blue ink) the above forms. All four of these forms are fillable online at the California Courts Web site: [www.courtinfo.ca.gov/forms](http://www.courtinfo.ca.gov/forms)

**Make three (3) copies** of each document. **(Always keep one copy for your records!)**

File your forms with the proper court in the county where you owe child support.

To file the documents with the court by mail, send **the original and two (2) copies** to the court clerk, **along with a self-addressed stamped return** envelope and a cover letter asking the court clerk to file your forms. When the court clerk returns the "Filed" stamped copy to you, find someone over 18 years old, and not a party in your case, to serve your documents. **You cannot serve your own documents.** There are two ways to serve documents: (1) by personal delivery or (2) by first-class mail. The person who serves the documents must complete a *Proof of Service* and file it with the court clerk. He or she must serve the local child support agency and the other parent at least:

- o **16 court days** before the hearing (if serving by personal delivery), or
- o **ADD 5 calendar days** (+ 16 court days) if serving by mail within California, or
- o **ADD 10 calendar days** (+16 court days) if serving by mail outside California, but within the U.S.A.
- o See Code of Civil Procedure §1005 for other situations.

### What paper do I file if I am served with a Notice of Motion or an Order to Show Cause?

You must **file** a *Responsive Declaration* at the court clerk's office at least **9 court days** before the hearing

date, or the court may grant the requested relief mentioned in the papers without any input from you.

You must also have someone (over 18 years old who is not a party to your case) **serve a copy of the document** on the other parent and the local child support agency (if applicable)

- o **9 court days** (if by personal delivery). **ADD 5 days** if by mail service within California. (See C.C.P. §1005 for other situations.)

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### Where can I get free help or information about my child support questions?

**Information is available** at no charge from the Office of the Family Law Facilitator (FLF) in every county. The FLF can help with child support, paternity, spousal support, and health insurance issues. The FLF can:

- Provide educational materials.
- Provide court forms.
- Provide assistance with court forms.
- Prepare guideline child support calculations.
- Provide referrals to the local child support agency, family court services, and other community agencies.

The FLF is *not* your attorney and does not represent either party. A FLF may assist both parties in the same case. The FLF is not responsible for the outcome of your case.

There is no attorney-client privilege and no confidential relationship between any person and the FLF. The FLF can also help the other parent in your case.

You should contact your own attorney if you want personalized advice or strategy, a confidential conversation, or representation in court. For information on finding an attorney who might be willing to help for a lower fee, you can check:

[www.courtinfo.ca.gov/selfhelp/lowcost](http://www.courtinfo.ca.gov/selfhelp/lowcost)

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### How is child support calculated?

The California Family Code (sections 4050- 4076) establishes a statewide **guideline for child support**. The amount of child support ordered by the court depends on:

- Number of children
- Percentage of time each parent shares with the children
- Income, earnings, or earning capacity of each parent
- Tax filing status
- Support of children from other relationships
- Health insurance expenses
- Mandatory union dues
- Mandatory retirement contributions
- Child care and uninsured health expenses
- Other factors

The court will order that health insurance be maintained, if available, at no or reasonable cost through the employment of the parent(s). The court will also order, as additional child support, reasonable uninsured health-care costs and child-care costs related to employment or to education or training for employment.

The child support order may also include the cost of travel for visitation, educational expenses, and other special needs.

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### When will the child support order end?

Child support payments are usually court- ordered until the child reaches the age of 18 years and completes high school, or age 19 if the child is still in high school full time and not self-supporting. Disabled adult children may be entitled to be supported by both parents beyond this period.

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### What paper do I file if I am served with a *Summons and Complaint (FL-600)* or a *Petition for Dissolution of Marriage (FL-100)*, and how soon must I file it?

You must **file** the ***Answer to Complaint (FL-610)*** or the ***Response (FL-120)*** at the court clerk's office within **30 days** after you receive the papers, or the court can make an order awarding the amount of child support the other party asked for without any input from you. If the *Summons and Complaint* was filed by a local child support agency, there is no fee charged for filing your *Answer to Complaint*. If the *Summons and Complaint* was filed by someone other than the local child support agency, or if you were served with a *Petition for Dissolution of Marriage*, there is a fee charged to file the *Answer to Complaint* or *Response*. If you have no or low income or receive public assistance, you can ask the court to waive the filing fee by completing a ***Request to Waive Court Fees*** (form FW-001) After you have filed your papers, you must have someone over 18 years old who is not a party to your case serve your ***Answer to Complaint or Response*** on the other party (and the local child support agency, if they are involved in your case), and file a ***Proof of Service*** with the court clerk.

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### The court “presumed” that I earned a certain amount of money. How can I change the order?

If a judgment for child support was based on a “presumed income” and your actual income is lower than the amount the court presumed, you have 1 year from the date of the first collection of money by the local child support agency to file a ***Notice and Motion to Cancel (Set Aside) Support Order Based on Presumed Income*** (form FL-640) and a Financial Statement (Simplified) (form FL-155). If the local child support agency is enforcing your case, there is no fee charged for filing a Request to Waive Court Fees (form FW-001).

WARNING: Do not wait to file your motion. Your deadline for filing may be less than one year if there are other legal grounds. Contact a lawyer for help.

The court may, where appropriate, set aside the original support order and recalculate the guideline amount based on your actual income, or possibly your income earning ability, for the period of time for which a support judgment was entered.

If you are not successful in setting aside an order for child support, you may also seek to change the order by filing a ***Notice of Motion*** for modification of child support.

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### How can I avoid the interest charges?

You can contact the local child support agency to determine how much you owe plus interest and work out a payment plan. You should also file a request for a court hearing to determine the arrears and interest.

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### Which agency in California is responsible for child support enforcement and how do I contact it?

The Department of Child Support Services (DCSS) is the state agency responsible for child support enforcement. The local office in each county is called the local child support agency or the local Department of Child Support Services.

**Toll-free DCSS number: 1-866-249-0773**  
**TDD: 1-866-223-9529**

### The locations of local child support agencies throughout the state is at:

<http://www.childsup.ca.gov/Home/LCSAOffices/tabid/301/Default.aspx>

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### Who can I contact if the local child support agency does not respond to my request for assistance?

**Call 1-866-249-0773 (toll free) to get information on what to do if you are experiencing problems with a local child support agency.**